

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

KIMBERLY A. DUDLEY,

Plaintiff,

v.

KILOLO KIJAKAZI,¹

Acting Commissioner of Social Security,

Defendant.

Case No. 21-cv-0001-GKF-JFJ

REPORT AND RECOMMENDATION

The opening brief in this matter was originally due August 23, 2021. ECF No. 13. Plaintiff failed to file an opening brief, and the undersigned filed an order to show cause. ECF No. 14. Plaintiff's response to that Order indicated that the original deadline was overlooked due to Plaintiff's counsel's staff calendaring errors. Plaintiff's counsel then requested an extension to September 24, 2021, which the undersigned granted. ECF No. 17.

On October 19, 2021, the undersigned noted that no opening brief had been filed to date in this matter despite the requested extension with no further requests for extension of time. Instead of filing another show cause order, the undersigned elected to reset the case briefing deadlines through an order directing Plaintiff's counsel to file the opening brief in this matter by October 22, 2021, or the undersigned would recommend dismissal without prejudice. ECF No. 18. That date passed with no response, and nothing has been filed to date in this matter.

RECOMMENDATION

Based on the facts detailed above, the undersigned recommends dismissal of this action
WITHOUT PREJUDICE.

¹ Effective July 9, 2021, pursuant to Federal Rule of Civil Procedure 25(d), Kilolo Kijakazi, Acting Commissioner of Social Security, is substituted as the defendant in this action. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

OBJECTION

In accordance with 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b)(2), a party may file specific written objections to this report and recommendation. Such specific written objections must be filed with the Clerk of the District Court for the Northern District of Oklahoma by November 11, 2021.

If specific written objections are timely filed, Federal Rule of Civil Procedure 72(b)(3) directs the district judge to

determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Id.; *see also* 28 U.S.C. § 636(b)(1). The Tenth Circuit has adopted a “firm waiver rule” which “provides that the failure to make timely objections to the magistrate’s findings or recommendations waives appellate review of both factual and legal questions.” *United States v. One Parcel of Real Property*, 73 F.3d 1057, 1059 (10th Cir. 1996) (quoting *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991)). Only a timely specific objection will preserve an issue for *de novo* review by the district court or for appellate review.

SUBMITTED this 28th day of October, 2021.


JODI F. JAYNE, MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT